1: Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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decided by the old village headmen and chief in consultation, at the commencement of the 'coming out' ceremony. This moving aside of the old men is an essential part of the ceremony and occurs even when there is unoccupied land available. For example, at the 'coming out' of Mwankuga, Mwaipopo's heir, the old men moved aside to make room for their sons, although there is a large area of unoccupied land in the chiefdom, which is slowly being colonized by Mwaipopo's men.

Although the main redistribution is at the 'coming out', later readjustments are common enough. If a particular men's village attracts many members, and these members become wealthy in wives and children, then it may be necessary for the old men to move aside a second time, to make yet more room for their sons. The senior headman of the side of the chiefdom concerned, in consultation with the chief and other village headmen, has the power to make equitable adjustments in the land holdings of the villages of his side. We watched one village, whose numbers had diminished, being moved to make more room for a junior one which had flourished. But so long as its members remain together, a village retains its name and identity, though its site may be moved more than once. 'A village', the Nyakyusa say, 'consists in men, not in land.'

Boundary disputes between villages of a chiefdom are not unusual. In the old days these often led to war. Nowadays they are taken before the Court, whence there is an appeal to the federal court, the District Officer, the Provincial Commissioner and thence to the High Court (*cf.* p. 137). One such case, which we observed, had dragged on for years because the chief concerned, who happened to be president of the Court, feared to give judgment lest he be bewitched by the village which lost the case (*cf.* Document p. 191).

The division of the land allotted to each village lies with the members of that village, under the leadership of their own headman. The village headman himself, and other prominent individuals in the group, get first choice of sites: a son does not have a prescriptive right to the building site and gardens of his father when the old men move aside for their sons. 'If you are prominent, and you like your father's old site, that's all right, the others agree; but if you are unimportant ("light"), no; one of the important men takes it; you have no power.' Certain building and garden

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sites are preferred to others, but the division of them at the 'coming out' does not appear to create much friction.

When the old men move they still maintain rights over what may be regarded as the major 'improvement' made on their old sites, that is, trees which they or others have planted. There are two species which were traditionally and still are of great value to the Nyakyusa, the bamboo and the *unyunguti*. Bamboos are used for house-building, while the *unyunguti* produces a fruit which is both delicious to eat and also full of seeds which are dried and crushed for ointment. As has been shown in a previous essay[1] rights over these trees are maintained when individuals move from one village to another. Similarly, when a whole village moves, rights over bamboos are maintained, the former owner returning to cut them himself if he chooses. But the less valuable *unyunguti* crop is left to the occupier. As one old man put it: 'We don't send our wives back to harvest the *imiyunguti* trees lest the young men make love to them there.' Bamboos are felled by men. Further complications are now potentially created by the planting of coffee-trees, but we know of no case in which a 'coming out' has yet taken place in a chiefdom in which coffee has been extensively planted—the first coffee-planters were those living on mission land which is unaffected by the 'coming out' ceremony. Now that coffee planting is becoming general, however, the difficulties of moving whole villages will be much greater.

The only land which was traditionally excluded from the 'new deal' in each generation is the very scarce and valuable ground in the bottom of old volcanic craters. This land is owned by families, and is always claimed by a kinsman when the occupier dies or moves to another chiefdom. It may be that long ago the land in each particular crater was owned solely by members of some particular village, but now it is held by old families scattered all over the chiefdom in which it lies. Thus ordinary land, of which in the old days there was ample, was re-allotted in each generation, but the most valuable ground was passed down from father to son. We shall return to this point again in our last chapter.

As we have seen, movement of individuals from one village to another is very frequent. Normally land for building and gardens

[1] Godfrey Wilson, *The Land Rights of Individuals among the Nyakyusa*, pp. 43–5. Rhodes-Livingstone Papers No. 1, 1938.

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is granted to a stranger by the villagers concerned, acting through their headman, not by the chief, who is usually informed, but seldom interferes. Only if a member of the chief's own family is moving within the chiefdom from one village to another, or if a very important stranger comes from outside, he may go to the chief and ask for a building plot, and the chief may then exercise his right of overlordship and grant the request. But this is a special and unusual case. It is villagers who grant land to an ordinary new-comer[1] and thereby accept him as one of themselves. His own wishes are taken into account whenever possible; if he sees a piece of ground which attracts him, and no one else has a claim to it, then it will be his.

We must emphasize the willingness with which strangers are received both by the villagers and the chief. Men are still scarcer than land in most places and the prestige and prosperity of villages and chiefdoms are increased by each addition to their membership. As we have said, part of the magical treatment at the 'coming out' is directly designed to attract followers to chiefs and village headmen. Strangers to a village are always given a house to sleep in while they are building their own and are usually given food as well, both formally by the chiefs and village headman and informally by the neighbours. This formal giving of food has lapsed in Porokoto's chiefdom, which adjoins Rungwe mission, and to which very considerable immigration has taken place in the last forty years; there the relative scarcity of land is reflected in a decline of hospitality to new-comers, though none have yet been refused land. But the usual custom still is to receive them generously.

The granting of land to a new-comer is subject to the rights of a villager who has moved but may return. As we have seen, moves from one village to another are frequent, and unless a man has been expelled for witchcraft or some other serious crime his building site and gardens are kept for him, at least for a time. Anyone who occupies them does so on the understanding that he must vacate them should the former owner, or his heir, return. Further, a man who moves retains certain rights over bamboos, *imiyunguti* and coffee-trees. The precise conditions under which individuals who have moved may reclaim their land have been discussed in *The Land Rights of Individuals among the Nyakyusa*.[2]

[1] cf. Godfrey Wilson, op. cit., p. 42. [2] pp. 36–42.

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and need not be recapitulated. The essential fact here is that the village is the group which allocates land to a new-comer, and which maintains the rights of individuals who have moved and who wish to return.

Once established in a village, a man can hoe any ground which has not yet been cultivated, and thereby make it his own.[1] No reference need be made to the headman and other villagers, provided that he does not encroach on land formerly cultivated by others, or on the main pasture land. There is no limit to the acreage he may use. Pasture-land is jointly owned by the whole village group and no individual has exclusive rights to any portion of it. Every member of a village has the right to graze his cattle on the village pastures, and this right may also be granted to an outsider by the village headman in consultation with his neighbours. But no one has the right to cut trees near the village (unless they are ones he has planted or inherited) without the permission of his fellow villagers. The death of one man we knew, the younger brother of a chief, was attributed to the fact that he had cut a branch from a self-sown tree growing in the arable land of a village in which he was a new-comer, without asking permission of his fellow villagers. It was said that 'the owners' of the village were angry and killed him because he had not asked their leave before lopping the tree. He had wanted the branch to make an axe-handle.

The land rights of Christians living in the chiefdoms are identical with those of their pagan fellows; but those who live on mission land are in a different position. They are tenants of the mission, paying an annual rent of 1s., and liable to be evicted by the missionary in charge if they leave the Church. A man so driven out loses the coffee-trees he has planted. One Christian informant remarked: 'We do not think it good to plant coffee on mission land because very often a man is turned out of the Church.' And at Rungwe mission even those moving voluntarily lose the coffee they have planted. Now all trees introduced by Europeans have been declared by the Federation of Chiefs to be the property of the planter, even though he has moved to a different chiefdom, and Christians feel that they have greater security of ownership in coffee planted in the chiefdoms than in that on mission land. The difficulties likely to arise at a 'coming out' are ignored, and

[1] Ibid., pp. 42–2.

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621 561 178 land in each generation. The territorial segregation of fathers and sons is directly dependent upon the shifting of the old men after the 'coming out' ceremony, without which the young men would not have sufficient land to establish themselves as a compact group on land adequate to support their growing families. Where no redistribution of land takes place, as on mission land and in the chiefdoms where the 'coming out' ceremony has been dropped, the territorial division between age groups becomes blurred within a generation.

621 425 423 178 Redistribution of land in each generation depends upon two further conditions: the existence of ample land to support the population, and relatively little development of land. As soon as land becomes scarce those in possession of it are reluctant to agree to redistribution. It is significant that the most valuable land of all in Nyakyusa country—that in old craters—is *not* redistributed at a 'coming out' ceremony, but is retained by an individual until his death, and then inherited by kinsmen. And as soon as improvements are made in the form of planting long-term crops, or building durable and expensive houses, the difficulties of redistribution are increased. Nyakyusa land-law recognised the right of an elder who had moved, or of his son, to the bamboos and *imiyunguti* trees he had planted (*vide supra*, p. 46). But such rights become much more complicated when it is not only an odd clump of bamboos or two or three trees which are at stake, but a large patch of coffee; or when, in place of the old-fashioned long hut (*ikibaga*) built with the co-operation of kinsmen and neighbours, there is a more substantial house with expensive doors and windows made by an expert carpenter. It has been shown that where individual rights over trees or other long-term crops are recognized, and such crops are planted on a large scale, individual tenure of land, as opposed to a temporary right of usufruct, tends to develop.[1]

621 476 178 Secondly, the solidarity of the Nyakyusa age-village, as of kinship villages in other African societies, is a function of a small-scale society. Fellow villagers have been hitherto, and are still in a large measure, dependent upon one another for land, for aid in economic undertakings, for sympathy and good fellowship, and for protection 'by night and by day'. But such mutual dependence is visibly decreasing. In the economic field co-opera-

[1] C. K. Meek, *Land Law and Custom in the Colonies*, p. 18.

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3. A LAND DISPUTE BETWEEN VILLAGES OF THE SAME CHIEFDOM

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This case was discussed with a great number of informants. We first quote the account written by Mwaisumo (our clerk) which sums up the earlier discussions. 'Mwansambe and Mwakalembo are quarrelling over the land of Ipoma. Both are village headmen of the older generation of Mwaipopo (the chief). Mwansambe is the *senior*, Mwakalembo the *junior*. Mwansambe is *senior* village headman of Mwaipopo. Mwakalembo is the next on his side (see table, pp. 181–2).

'At the "coming out" of Mwaipopo the old men gave Mwansambe the land of Bujegu, and said that his *junior* Mwakalembo should build on the land of Bunikali. He (Mwakalembo) built with Mwakwese, the man of Seba.

'When the "coming out" of Mwankuga, Mwaipopo's son, was held, Mwansambe sent to his *junior* Mwakalembo, saying: "At your place here we are going to build the house of our *wife* Kalinga, that is to say we are going to plant the *ulepanda* tree of our child Mwankuga here." Mwakalembo agreed, but in secret he thought to himself: "My *senior* wants to seize my village! See he is building the great house at *my* place, and I am a *junior*!" So they brought out Mwankuga with Mwafungo as his *senior* headman, and Mwasebu Kabolile as a *junior*, and they planted the *ulepanda* tree. Mwafungo built with his people and Mwasebu Kabolile with his. Later on Mwansambe arranged for his "sons", *i.e.* Mwafungo and his fellows, to go to his side, and Mwakalembo thought that his land was saved. He had thought that his *senior* was taking his country, but lo, the latter had moved!

'At that time Mwafungo went to enter into an inheritance[1] in MuNgonde (*i.e.* on the Lake-shore plain). On his return he went to the side from which he had come. He sought a bull with which to say: "Fathers, I have arrived." Mwansambe called his *junior* Mwakalembo saying: "Our son has arrived, they are eating the meat there without our having discussed together where we should kill, or where we should eat the meat." (*cf.* pp. 171–4.)

'So now Mwansambe wants to give his child Mwafungo a homestead site in which to build, he wishes to give him one at the *ulepanda* tree where he first established him, and he has told his *junior* Mwakalembo so. Mwakalembo objected, saying: "How can you give him my homestead? Where shall I go?"

[1] Another reason for the departure of Mwafungo (Mwambupa) is given on p. 230.

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'Mwansambe said they could both build there together.
'Mwakalembo said "No."
'Mwansambe said: "How can you refuse? The site is mine, and I
m your senior. Do you not see the *ulupando* tree which I planted for
y child Mwafungo?"
'Mwakalembo replied: "Yes, I see it, but you went away and left
, you and your children. I gave thanks thinking my land had escaped
pture."
'Mwansambe said: "And the *ulupando* tree, do you tell us that it
as seized also?"
'Mwakalembo replied: "No, I don't deny the *ulupando* tree, but
hen you pray you pray in your homestead, in the house of your wife.
f you wish you can plant again at your place."
'Mwansambe said: "Why do you quarrel with me, Mwakalembo,
, your father, your senior, I who gave you land on which I said your
llow, Mwafungo should also build, since you are both my children?"
'Mwakalembo replied: "The land about which we are quarrelling
mine, it is the place of my blood. I spilt blood, I seized it from
Mwaipaja when I fought with him."
(For originally this land about which they are quarrelling was
Mwakwese's, it was where Seba's house was built. Then that Mwai-
aja of whom they speak was the assistant village headman—a senior
an. The followers of Mwakalembo made love to the wives, they
pproached them when they (the women) went to draw water.
Mwaipaja was angry and called out his men to fight with the followers
f Mwakalembo. Mwaipaja was defeated, and fled. The followers of
Mwakalembo took his homestead. Mwaipaja was driven out: he built
t Lupata where Kalunda and his men are now.)
'It is here that Mwansambe planted the *ulupando* tree. It is this land
hat Mwakalembo means when he says that his land escaped seizure
y his senior when he went away again with his followers! Mwansambe
ays: "See, it is mine also, my father moved Mwaipaja aside, that my
nior should build here."
'Mwakalembo says: "I got it by conquest, I spilt my blood."
'People commenting on the case in private say that Mwansambe is
rong, the country is really Mwakalembo's. Many say that although
he case is put off it is not finished, Mwansambe will be overcome, and
o Mwaipopo himself thinks.
'Mwaseba Kabolile and Mwafungo Mwambuputa are those who
old the country now, they are the children of Mwansambe and
Mwakalembo. Mwenenganga, who began speaking (at the trial in
ourt), is the junior ('brother') of Mwansambe but he holds all the
eniority of Mwansambe because Mwansambe himself is not in the

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country, he has moved. The Mwakalembo who is standing there is not Mwakalembo himself, but his son. And the Mweneganga Mwakoloma who is speaking is a junior, but he speaks because he knows how to speak—he has a "good tongue" (i.e. is an orator). And Ngulyo also is a junior—he is speaking because he knows how to speak. All of these are village headmen, senior men, fathers of Mwafungo and Mwaseba Kabolile.'

The case was twice discussed at greath length in Lupata Court but no judgement was given. Some maintained that were a judgement given war would result, because the losers would attack. Mwaipopo himself, as president of the court, was said to be afraid to give judgement lest he suffer from 'the breath' or witchcraft of the offended parties. He refused to hear the case a third time and, as Kasitile pointed out, sixteen months after the second hearing Mwaipopo was sleeping in the village of Bujenga (Mwakalembo's village), and it was Mwakalembo and his men who were in possession of the disputed land. Mwaipopo feared the witchcraft (or 'breath') of Mwansambe and his men.

4: Tew E-4 (no date) 1950 FN17 Ngonde FN17

428 was set aside in succession, his right to inherit the property and widows was none the less undisputed.[1]

Slavery (among the Ngonde)

567 Slaves were obtained by the Kyungu and chiefs in warfare and as fines for offences. The Kyungu gave women slaves to his important chiefs, thus strengthening the kinship bonds between them and himself, for the recipient would regard the Kyungu as his father-in-law if he took the woman to wife, and her children would be counted as grandchildren of the Kyungu. The owner of a slave was obliged to find a spouse for him or her, and a male slave could rise to positions of importance.[2]

Land Tenure

423 No individual can own land unless he himself either works it or is a full member of the local community. Rights to land are only rigorously defined in cases of scarce and
425 valuable land. Owing to witchcraft beliefs, movement from one place to another is constant. In taking up new land after a move, a stranger is granted land by the villagers acting through their great commoners, the chief being merely informed. Both chiefs and villagers welcome new-comers. If a man returns after absence to his own village he has a claim to enter into possession of his old building site and gardens. The claim varies in strength according to his relations with the villagers and the chief. If a man goes to a neighbouring village within a chiefdom, he can go on hoeing his old gardens, ownership depending on effective use.

Land suitable for bean and maize plots is the most valuable, as it is hoed continuously for years. Land for other crops is plentiful, so that if a man leaves a garden fallow for only two years anyone may cultivate it. The most scarce and valuable land is in the bottom of old volcanic craters, and in these cases rights are insisted upon, so that if a man moves to a new chiefdom, his next of kin claims his crater land. In other cases, when a man moves from a chiefdom, his old gardens revert to the joint ownership of villagers and chief. When a man dies his heir takes his wives, cattle, and movable property, but not his land, unless he comes to live in the village.

Rights in trees differ according to the types of trees and according to local custom. In some cases rights in trees are lost when a man moves away, in others the rights to valuable trees are claimed by the nearest kinsman in the neighbourhood. Now that chiefdoms are no longer in a state of potential war with each other, the group within which property is held is wider. Coffee-trees have been declared by the Federation of Chiefs to be the property of the original planter, even though he may have moved to another chiefdom. The Agricultural Officer takes over abandoned coffee-trees to tend them for pest control.

423 Pasture is jointly owned by the whole village group, no individual having exclusive rights in it.

No direct charge is made for the right to build or cultivate. Certain obligations are owed to a chief in view of his over-lordship, e.g. providing cooked food for ceremonies of the chief's own immediate family, but this obligation is reciprocal, the chief being expected in return to kill beasts to feed the people.[3]

[1] Wilson, 3, 1939, pp. 52–4. [3] Ibid., p. 46; Mackenzie, 1925, pp. 38–40.
[2] Wilson, 3, 1938, pp. 30–48; Mackenzie, 1925, p. 93.

5:Wilson E-5 (1934-1938)1938 FN17 Ngonde FN17
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far as as men compete for land that rules of tenure are developed among them. And where competition is weakest there the rules are least strict.

In Nyakyusa society every married man holds land of his own for building and agriculture, for there is still enough for all, and pastures his cattle on the grasslands of some village group. His land rights, in which, as we have seen, his wives and children participate, are conditioned at every point by his membership of a particular village, his allegiance to a particular chief and by the particular cultural idiom of his tribal group.

Before the " coming out " a boy's village, as we have seen, is built on land assigned for the purpose by the parent village. A block of land for building is set aside by the great-commoner in consultation with the other men as their sons begin to reach the age of leaving home, and there the boys are often joined later by contemporaries, sons of other villages of men. At first building sites alone are needed, but later, as the boys grow up and get married, they need gardens too and bring the adjacent ground under cultivation. In doing so they are careful not to infringe upon their fathers' land rights, they either hoe land which was previously unowned[1] or else that which has been specifically granted to them by the parent village. Into the nature of such grants of garden land before the " coming out "—whether they are block grants by the parent village as a whole to the boys' village as a whole, or separate grants by individuals to individuals—I omitted to enquire.

At the " coming out " a whole tract of land is formally allotted to each village of young men by the old chief and his great-commoners and within this tract individuals take up garden land by hoeing it. At the " coming out " it is said that " everything is made new," boundaries are redrawn and the new chiefdoms and villages of the young men are ceremonially incorporated.

The situation in which individual land rights in relation to the village group and the chief are clearest to an observer is that of the taking up of land after a move, for it is in this situation that disputes are most frequent.

Mainly owing to their religious beliefs movement from one place to another is constant among the pagan Nyakyusa. If a man or his wife or child falls sick and does not respond quickly to medical treatment the witchcraft of neighbours is at once suspected as a possible cause ; there are always other possible causes too so diviners are consulted in order to decide between them ; but if the suspicion of neighbourly witchcraft is confirmed then the cure for the sickness is held to lie in moving. In every village " some people " are vaguely believed to have the power of

[1] Vide infra, pp.41-2.

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425 In discussing the taking up of land after a move it is therefore necessary to distinguish clearly between men who move to villages in which they are newcomers and those who return, after a period of absence, to their home villages.

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621 Normally land for building and gardens is granted to a stranger by the villagers concerned acting through their great-commoner, not by the chief, who is usually informed but seldom interferes. Only if a member of the chief's own family is moving within the chiefdom from one village to another or if a very important stranger comes from outside, he may go to the chief and ask for a building plot, and the chief may then exercise his right of overlordship and grant the request. But this is a special and unusual case. Village land is primarily governed by village relationships. It is villagers who grant land to an ordinary newcomer and thereby accept him as one of themselves. His own wishes are taken into account whenever possible; if he sees a piece of ground which attracts him and no one else has a claim to it then it will be his.

An old Kukwe great-commoner thus explained the granting of land to a stranger: "First the stranger from another country comes to a friend in this village and says that he wishes to build here, then the friend brings him to me, the great-commoner,—or he may come directly to me in the first place; and I go and tell the chief. Then the chief, according [431] to the old custom, would say 'Good! Go and cut a banana bunch for him,' and I would cut a banana bunch from my own homestead, not from anyone else's, and the chief would send one of his wives to me with cooked food for our guest the stranger. This custom is now no longer followed in our country but in the more remote chiefdoms they still cut bananas and cook food in such cases; here the stranger now just comes and is not given anything. And again when he wishes to begin building we go and tell the chief, who tells us to give him a plot to build on, and then my friends and I choose a place for him." "Does not the chief have a say in choosing the plot?" I enquired. "No, not the chief; does he know the details of our land-rights? He does not. It is we who choose the place for the newcomer. But if he does not like the plot we give him and has himself seen a place which he prefers he will ask us for it and maybe we will give it him." "Do not people sometimes go directly to the chief to ask for land?" "No, they always come first to us, the commoners, not to the chief; how should a man presume to approach the chief by himself? No, a newcomer always approaches us, and it is we who inform the chief. I, the great-commoner, may go alone to tell the chief or I may take the stranger with me, as I please." And a young Kukwe chief confirmed this, with perhaps a shade more emphasis on the part played by the chief: "The stranger goes first to the great-commoner

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and makes his request for land, then the great-commoner goes to the chief and informs him that so and so has come with a request for land, and he asks his opinion as to which piece to give the stranger. Then the chief suggests that perhaps the great-commoner knows of a suitable plot. So the chief and the great-commoner discuss it together and decide. Then the great-commoner shows the plot to the stranger."

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It is quite clear in my evidence that, though the normal custom is to consult the chief when a newcomer is given land, yet the newcomer's title is in no way invalidated if the great-commoner omits to do so at the time and simply tells the chief later after the grant has been made.

So much for the initial reception of a stranger and the grant of a building plot, the next step is the grant of garden land. But before discussing this we must emphasize the willingness with which strangers are received both by the villagers and the chief. Men are still scarcer than land in most places and the prestige and prosperity of villages and chiefdoms is increased by each addition to their membership. Strangers are always given a house to sleep in while building their own and are usually given food as well, both formally by the chief and great-commoner and informally by the neighbours. The great-commoner who told me that the formal custom of giving food had lapsed in his country belongs to the chiefdom which adjoins Rungwe mission, a small chiefdom to which very considerable immigration has taken place in the last forty years; there the relative scarcity of land is reflected in a decline of hospitality to newcomers, though none have yet been refused land. But the usual custom still is to receive them generously. "It is an ancient custom amongst us to welcome strangers, so that the chiefdom may increase and flourish."

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In giving garden-land to a newcomer the procedure differs slightly according to the value of the land in question. The great-commoner takes him out and shows him, if the land is scarce and valuable, an exactly demarcated piece, if it is cheap and plentiful, a vaguely defined area within which he can hoe where he likes. In the upland chiefdoms, for example, the best maize and bean plots are scarce; men hoe the same ground year in year out, planting maize and beans alternately in it or, sometimes, maize only with an interval of a few months fallow each year; and in this case the boundaries of each man's ground are precisely marked. But for the growing of sweet-potatoes and millet there is plenty of good land available and men hoe more or less where they please. "A stranger named Tusekelege," I was told, "came to the village of Ibungila (in Kukwe country). Amongst other things he asked for a maize-garden, so they gave him the ground of a man Mwasumbi who had moved to Masoko. They told Tusekelege that he could hoe only the same extent of ground

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166 as Mwasumbi had, because there were some other maize-gardens adjoining it. The other land he asked for was not near anyone else's gardens, so he was told that he could hoe just where he liked."

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Such is the custom of giving land to a newcomer, whether he comes from a different chiefdom altogether or from another village of the same chiefdom. He has no claim to any particular land but the villagers welcome him gladly and give some to him. If, however, a man returns after a period of absence to his home village then he has a claim, varying in strength in different circumstances, to enter again into possession of his old building site and gardens. But his claim is never an absolute one, it depends upon his relationship to the villagers and to the chief; they it is who decide it.

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Let us first consider building sites. If a man moves from his home village leaving his house standing there and another is given the site, and if he returns before the house has fallen into disrepair, before it has had to be rebuilt, then the occupier will be evicted in his favour, the villagers will always admit his claim to that site. But only, of course, if they are in general prepared to have him back in the village; if he has been expelled for witchcraft or some other serious crime he has no possible claim at all.

When men move and leave their houses behind it usually but not always implies an intention to return in a few months. If they move because of sickness and the suspicion of witchcraft men are often invited back, as we have seen, and sometimes they accept the first invitation; and then, if they and their families remain healthy, all is well. If a more protracted absence is intended from the first then the normal custom is to pull down the house and to carry the bamboos with one.

A young Kukwe great-commoner gave me from his own experience an example of the eviction of a man in occupation of another's house: "While my father was alive I fell sick and moved to Mwankenja's country leaving my house behind without taking it down. And I returned quite soon again, I was not a year away. But meanwhile, when I first moved, a stranger came and was put into my house, he was not told that I might be returning; so he went into my house—but as he was a bachelor the house was too big[1] for him. Afterwards my friends remembered me and went to bring me back, and I came with them; and I said that as another man had been put into my house and as I was myself an owner of the soil (i.e. he was the son of an old family and so had the right to choose any unoccupied plot for himself anywhere he pleased) I would build elsewhere. But they would not hear of it and said that I must go back to my own house. So they informed the newcomer that the owner had returned and gave him another place."

[1] This is a boast, irrelevant to the main argument.

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Again if the villagers expect a man to return and if they themselves wish him to do so, then his homestead is normally kept for him. If he refuses their first formal invitation to return they may give his homestead to a newcomer meanwhile, but only provisionally ; and if he does return later, whether by another formal invitation or on his own initiative, then the newcomer is moved elsewhere.

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The difficulty arises when a man comes back unexpectedly to find that a newcomer has been given his site unconditionally. Perhaps the villagers are indifferent to his return and so have omitted to keep his site for him ; but far more frequently it is that he has been many years away and has refused several invitations to return, and so has led the villagers to think that he is never going to come back at all. But, whatever the reason, if his site has been given unconditionally to a newcomer, who has then built his own house upon it, the villagers cannot possibly evict the newcomer in his favour ; his only chance of getting the old site back lies in an indirect and tactful approach to the chief. The chief, as overlord, has the power to evict the newcomer if he chooses, but he may not choose to do so. And, if he does not, then the man will have to build elsewhere.

[622]

I was discussing these points with one of our servants whose father had recently moved from Bulindanajo, his home village in Mwaipopo's chiefdom in Selya, to a village in the adjoining chiefdom. I asked him to explain to me his father's potential rights, if he were to return later to his home village, to enter again into possession of his old homestead.

" If a man, like my father for instance, has moved and his friends wish him to return they go to fetch him back, but if he then at first refuses to return they may put in a stranger on his homestead. But in doing so they inform the stranger that the owner of the homestead is away in such a country, that he, the stranger, is just eating the bananas meanwhile (i.e. is only in temporary possession) and that, when the owner returns, he will have to leave this place and build on another site which they will then give him for his own. In that case when my father returns, if he wishes for his old site, his friends will move the newcomer away, because they have told him beforehand, and my father will have his own old site.

" As it happens, however, when my father did actually move recently they did not put any newcomer on to his site, but Mwakyoma . . . . one of his neighbours chose to build there himself. And him they do not inform of my father's rights, for he is already aware of them. If my father returns later his friends will turn Mwakyoma out telling him to go back to his own old site. For it always happens with a good homestead on which bananas do well that people covet it, and when the owner moves,

[1] This is a boast, irrelevant to the main argument.

[This footnote refers to p. 36. — Analyst]

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someone, coveting the vacant place, goes and builds there. But if it is a neighbour he knows that it is not his own and when the owner returns he relinquishes it and goes back to where he was before.

" It may happen, however, that the owner of a homestead moves and lives many years away; his friends go to fetch him but he continually refuses to return, until they begin to think that he has moved finally and forever. And, in that case, they may, perhaps, put a man in there without informing him of the existence of any other owner. The newcomer builds a house and thrives. And if the previous owner then after all comes back they do not evict the newcomer; shame prevents them, for they never told him of any such possibility. Then the old owner, as it were my father for example, seeing that another is in occupation of his site goes to a different village in the same chiefdom and asks for a site. But the great-commoner to whom he goes asks him why he is approaching him—'It is true,' my father then answers, 'that I have a place in Bulindanajo and the graves of my family and my trees are there, but another man has [622] built upon it.' Then the great-commoner gives him a site, but he also goes to tell the chief what has happened. Then the chief, Mwaipopo, summons the men of Bulindanajo and asks them why they have driven my father away, on his return to the country, from the site that was always his. The villagers admit their mistake but explain to the chief that, as they thought my father was never going to return at all, they put in another man. So they discuss the matter; and the chief, if he so wishes, may summon the present occupier and tell him that his friends deceived him by omitting to inform him of the probable return of the owner of that site and that now, as the owner has returned, they will have to move him and give him another site; and thus the chief evicts the present holder. But such an action must come from the chief, his neighbours cannot evict the occupier, for they gave him no initial warning. So then my father would return to his own old site. But maybe in such a case my father would himself prefer to build elsewhere, he would say to his friends that, as another had built on his site, he would be content to watch over his family graves from afar and to build in a different place."

As for his old garden-land, to that too a man has a title on returning to his home village, but it is only scarce and valuable ground that he will ever trouble to claim if others are in possession. At first, when he moves from the village, his fellows, if they intend to invite him back, keep his gardens for him just as they keep his house site; but if he refuses to return at first then maybe the ground is given to others. But he can always recover it later when he does return. It is easier to get old gardens back than it is to get a house site, for no great hardship is involved for an

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evicted man. And it is even possible sometimes to make good a claim to the old gardens of one's father, even although one has never hoed them at all oneself; this is more difficult however, the claim may be refused or alternatively a compromise may be effected by dividing the land in question between the claimant and the present possessors.

As an example of the keeping of gardens vacant for a man who is expected to return we may cite the story of Nyambo, a Kukwe, as it was told to me by a young man who lived near him. This case is of particular interest as it brings out two points to which we have not yet referred; firstly that the chief himself sometimes takes the initiative in inviting a man back, and that his doing so widens the invitation to include all the villages of the chiefdom, not only the man's old home village; and secondly that it possible to build in one village of a chiefdom and own gardens in another. This second point will be discussed again later.

" A man named Nyambo moved because eight of his cows all died in quick succession and he thought that his neighbours, maybe, had bewitched them; but he moved without telling people of this reason. After he had spent eight months away, however, the chief sent his great-commoner to enquire of him why he had moved and left his chief wondering, and Nyambo replied that he had moved because of the death of eight of his cows all within a few days of one another, a fact which had led him to suspect that his neighbours hated him; and he would never, he told the great-commoner to inform the chief, be persuaded to return. So the great-commoner reported all this to the chief. Whereupon the chief suggested that it would be a good thing to go and fetch Nyambo back forcibly. And he, the chief, went in person with a crowd of men from Nyambo's old village and they just seized upon his furniture and drove off his cows and took them all home. But even so Nyambo refused to return and spent another two days where he was. Then they sent again to urge him to come back and at last he agreed because the chief himself had begged him to do so; he said, however, that he would prefer not to build in his old place, because his cows had died there, but rather across the river in the village of a different great-commoner. And so he did. None the less he continued to hoe his old gardens, and he still does so. They had left his gardens vacant because they had always meant to fetch him back. Now that he has returned and gone to live in another village they have given his old building site to a newcomer from Masoko, but his gardens are still his own."

The story of Kalonga, another Kukwe, exemplifies a man's right to reclaim his own old gardens. It will be noticed that the ground which he reclaimed was of particular value.

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166 423 425 " Kalonga had moved from the country of Kissokola to Masoko and other people had taken his ground and hoed it. It is the kind of ground which we call *umfweje*, rich soil near water. Kalonga had moved because of illness, several of his children had fallen sick and more than one had died. After he moved his neighbours never went to invite him back.

166 423 425 622 " Now Kalonga himself did not come back to live, but he brought back his mother. She had gone with him, but then she began to complain that he had taken her to an unpleasant country and she would prefer to go home; so he came back just to build a house for her. He did not build for her in his old village but asked another great-commoner (of the same chiefdom) for a site; he did however go to the chief to reclaim his old garden (the *umfweje* to which we have already referred). Now four men had divided the ground between them; they had approached the great-commoner and asked for it and he had referred them to the chief, fearing that he might be blamed for giving the ground away if Kalonga should return subsequently. And the chief agreed that they should take it, so as not to let it lie idle.

" So when Kalonga came and reclaimed it the chief pointed out that he had moved and left the country (and so had no claim to the land). But no, Kalonga replied, he had not moved, for see he had brought back his mother and built a house for her, which was exactly equivalent to living in the chiefdom himself. And the chief admitted his argument and agreed that, so soon as the present holders had reaped their standing crops, he should re-enter into possession of his own ground. So now Kalonga comes regularly with his younger brothers and they hoe the land quickly (being many) for their mother and go home again. Kalonga is of an old family and his father is buried in that chiefdom."

166 423 425 622 624 And finally the story of Enoch the son of Mwakajileke, another Kukwe, well illustrates the more limited rights of a son to claim his father's old gardens which he himself has never hoed.

" Mwakajileke built in the village of Ibungila, and he died there in 1925. He had three sons, all of who[illegible] moved after his death; one of these sons, whose name was Enoch, w[illegible] and built at Kyimbila; and meanwhile the chief gave the garden-land of Mwakajileke to other people. Part of this land was cultivated by a commoner named Gwaselya but he too, later on, moved into another chiefdom and the land was left unused. Then Enoch returned to the country to find that no one was now hoeing the ground which his father had used to hoe, so he approached Mwangokile, the great-commer, and asked for it: 'As no one is hoeing your father's land,' Mwangokile replied, 'you may go and hoe it yourself, but there are some other men who want it and they have already asked me for it, so I must divide it between you.' So he went with them and marked

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166 out boundaries, drawing lines on the ground; he divided the land into
423 three portions, one for each. The others were strangers to the chiefdom
425 but had taken a fancy to that piece of land."
622 The sentence in this story "The chief gave the garden land of
624 Mwakajileke to other people" deserves remark for it in no way implies any other custom than the one we have previously described. And it illustrates the dangers of relying too much on verbal statements of custom. When a stranger is given land by a great-commoner after reference to the chief he is commonly said to have been given it by the chief. The chief, from one point of view, is the overlord and the great-commoner acts for him. But, and this is an essential qualification, the great-commoner nearly always so acts for the chief and, save exceptionally, it is wholly incorrect for the chief to grant land directly. The great-commoner acts not only for the chief but also as the representative and leader of the villagers; and in relation to them the chief cannot exercise his rights of overlordship save occasionally and in particular circumstances.

166 The old Kukwe great-commoner whom we have already quoted
423 explained this to me very clearly: "Occasionally one of his own men will
425 ask a chief to give him ground to hoe in another village, 'If indeed you
621 say that the land is yours!' (challenging the chief to assert his right of
622 overlordship). Then the chief agrees that all the land is most certainly his; but still, if it is possible, he tells the man to go to the commoners of that village and ask them for land. If the chief does not do this (but makes a direct grant of land) we blame him for not being a true chief: 'Who is it,' we ask him, 'that has built up this country? Did you do it all by yourself? It is we the commoners who have built it up! And how is it, then, that you give this man land without consulting us?'" [754
626] Nor is the censure of his people mere idle talk for a Nyakyusa chief, he fears that they may bewitch him, that the witches among them, led by the great-commoners of the several villages, may come in dreams at night and cause him to sicken or to die.

166 So much for the initial grants of land to newcomers and the rights of
423 men returning to their home chiefdoms. If a man goes back, after moving, to a chiefdom which is in no sense his home, where, that is to say, he is not a member of an old family but in which he has himself spent some years, he is treated as a newcomer. He is welcomed but he has no rights to the ground, whether building-site or gardens, which he previously occupied.

423 Once established in a village, however, any man can hoe any unowned
425 ground within its borders and thereby make it his own. A newcomer for

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the first few years, until he has become familiar with the details of the rights of the other villagers, will normally ask for more land as he requires it, in order to avoid unwitting trespass; but an old member asks nobody. If, however, it is desired to hoe land to which some other villager has a prior claim then his permission, as the owner, must first be asked. Any previously unowned land that an ordinary commoner once hoes is his property, all informants agree, so long as he remains a full member of the village. Within the village there is thus a theory of continuing ownership but, as we have seen in discussing the reclaiming of land after a move, it is only to the more valuable ground that it is strictly applied. A valuable garden may be left fallow for years but, so long as the owner is a member of the village, no one can take it without asking his permission; nor is he under any kind of obligation to give it away when asked. "If a stranger comes," a great-commoner told me, "and we commoners of the village want to give him some old gardens of one of our number we ask the owner to give the ground to the stranger; but if he refuses we cannot insist."

Many gardens, however, are not in fact continuously owned; men not infrequently hoe less valuable ground that has been left two or three years fallow without asking the permission of the previous holders, as they should strictly do. So long as the ground is relatively plentiful no objection is usually raised, but it always may be; and the increasing scarcity of land under modern conditions is already prompting some men to a new insistence upon their rights.

"In our country," a young Kukwe told me, "it is the maize and bean plots which are the most valuable, because we hoe them continuously, year after year. . . . Land for other crops is plentiful, so much so that if a man leaves one of these gardens fallow only for two years then anyone else who wishes can come and hoe it. Nowadays, however, the custom is changing a little and some men like to keep the same gardens continuously for all their hoeing."

In the case of the most scarce and valuable ground of all, that in the bottom of old volcanic craters, the principle of continuous ownership is carried furthest. Rights in it have always been insisted upon and whenever a holder of such land moves from the chiefdom then the nearest kinsman of his who lives there steps in and claims it. And here the village group ceases to be of any importance. It may be that long ago the land in each particular crater was owned solely by the members of some particular village but now it is held by old families scattered all over the chiefdom in which it lies. Apart from the craters, however, all arable land can be truly said to belong to some village or other.

It is, none the less, quite possible to hold garden-land in a village without being a member of it, but only if the land is kept in effective use.

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We have already seen in two examples that a man, when returning to the chiefdom from which he has moved, may recover his old gardens even though he builds in a different village. And it frequently happens also that a man comes to a village and asks for garden-land only, continuing to live in another village, or even in another chiefdom. Such requests the villagers always, so far as I know, grant willingly, for once a man has taken up land in a new village there is every prospect that he will one day move altogether and build there. In case of sickness he is more likely to move to the group where he is already half-established and sure of a warm welcome than anywhere else.

When a man moves he has the right to reap the crops standing in his old gardens so soon as they ripen, but after that the ground, save in the case of craters, reverts to the joint ownership of villagers and chief. And his building plot and bananas revert to them immediately. The next-door neighbours on either side keep the bananas clean and eat the fruit themselves until the plot and the bananas are given by the villagers, with the chief's approval, to another man. If the previous holder has moved to a place without bananas and not very far away he may, in the first year, send to his late neighbours and ask to be allowed to cut and carry away some of the banana fruit "for my bananas in my new plot have not yet grown." But his request is of grace and not of right, it may be refused. If the villagers like and respect him and hope to persuade him to return later it will always be granted, but if they dislike him and are glad to be rid of him then it will not. If the plot is a separate one without immediate neighbours then no one keeps the bananas clean and, unless someone else is given the plot soon, they get choked with weeds and die.

When a man dies the heir takes his wives, his cattle and his movable property, and, if he comes to live in the dead man's village, his land also. But if the heir remains in his own old village[1] he has no rights over the dead man's land. The situation is then exactly comparable to that which obtains when a man moves from one village to another, his land rights in the old village lapse.

Rights in trees differ in some respects from rights in land and they differ also for different kinds of trees; and here, as an added complication, we are also faced with a difference of local custom.

Prior to the introduction of new trees by Europeans the only ones of any great value to the Nyakyusa were the bamboo (*ikilasi*) and the *unyu-nguti* tree, whose botanical name I have been unable to find out. Bamboos

[1] Owing to the age grouping among villagers and the long period which traditionally separated one pregnancy from another in a woman's life it is unusual to find full-brothers in the same village.

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are used for house building, while the *syungusi* produces a fruit (*indilolo*) which is both delicious to eat and also full of seeds which are dried and crushed for ointment (*inyemba*). Of the two trees the bamboo is the more valuable.

Now among the Kukwe and Selya groups rights in these trees are somewhat similar to rights in the valuable crater plots. When a man moves, his bamboos and *syungusi* trees, unlike his bananas, do not revert to the villagers; normally they continue to belong to his nearest kinsman in that chiefdom, who cuts and uses the bamboos and picks the fruits of the *syungusi* trees. If the villagers give the site to another man then the newcomer has no rights over these trees unless the kinsman himself gives them to him. But it sometimes happens that, where only *syungusi* trees and not bamboos are involved, the kinsfolk do not bother to exercise their rights; then the trees are treated like bananas, picked by the neighbours until a newcomer is given that plot, and then by him.

If however, among the Selya and Kukwe groups, a man moves leaving no kinsfolk near at hand, then the chief (*umulefyale*) as the supreme overlord has a right to his trees, and if they are near the chief's own place this right is exercised; he cuts and uses the bamboos and his wives pick the *syungusi* trees. If another man is given the land by the villagers to build on then he goes and asks the chief to allow him some of the *syungusi* trees, and his request is usually granted, the chief gives him two or three of the trees, keeping two or three for himself. But the bamboos, being more valuable, are usually kept altogether by the chief. If, however, the ownerless trees are at a distance from the chief's place then he normally does not trouble to claim the *syungusi* trees but only the bamboos. The former are at first picked by the neighbours and later given by the villagers to a newcomer together with the site. And, even with the bamboos, if they are a long way from the chief's place a "good chief," they say, will allow the newcomer to cut some of them without payment; but it is wholly within the chief's power to keep them all for himself if he wishes, and "bad chiefs" do so. Furthermore a chief does occasionally also exercise his right to claim an ownerless *syungusi* tree at a distance. If one of his wives comes and complains to him that she has no *syungusi* tree of her own, then he takes her to a site from which someone has recently moved leaving ownerless trees behind and there he gives her one of the trees; the rest he leaves as usual to the villagers and so to the newcomer.

Bamboos are men's property and only a man can claim them but *syungusi* trees can be claimed by a kinswoman, a sister or a daughter, of the old owner if none of his near kinsmen have troubled to do so.

We must here take note of a most significant modern development. In the old days rights in trees could only be exercised by members of the

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same chiefdom in which the trees were growing; for between chiefdoms an actual or potential state of war always existed, and a man coming from a hostile group to claim property would have been driven away violently. But to-day under European rule it is now customary for a man to cut his own bamboos, if he is living in a neighbouring chiefdom, instead of leaving them to his resident kinsfolk. The group within which property can be held is gradually widening.

Such is the custom among the Kukwe and Selya groups; their rights in bamboos and *syunguti* trees are not normally lost when a man moves provided there are kinsfolk left nearby to exercise them. The one exception to this rule is in the case of expulsion for witchcraft or other serious crime. Then even if the man expelled has left kinsfolk behind him, still the chief takes his trees.

Among the Nyakyusa proper, on the other hand, the *syunguti* trees are treated like bananas. When a man moves he loses all rights in them and, unless the chief steps in to take them, as he always may, they are granted by the great-commoner, together with the soil, to the newcomer who is put on that site. Bamboos, as in Selya and Kukwe country, continue to belong to the kinsman of the man who has moved.[1]

Trees introduced by the Europeans, of which coffee trees are the most valuable, have been declared by the Federation of Chiefs to be the property of the planter, even although he has moved to a different chiefdom. This law was made after much anxious discussion between the chiefs, the Administration and the Agricultural Department and is, of course, subject to revision if it is found after trial to be impracticable. In the case of coffee it has inevitably been modified in practice since coffee must be tended continuously if it is to remain free from pests and to bear fruit, and any man who actually looks after coffee trees has a generally admitted claim to the crop unless he is paid by the planter for his labour. The planter, however, in surrendering the trees to him may compel him to pay something for their initial value.

Further, as the Agricultural Officer has the right to uproot any untended coffee trees and must exercise it if pests are to be kept under control, the practice has grown up of his taking over any large number of abandoned trees and keeping them clean with labour paid by the Native Treasury; the trees are subsequently sold to some other man and the proceeds paid into the Native Treasury again. If, however, a planter of coffee trees makes arrangements, when he moves, for the cleaning of his coffee then the trees remain his own.

[1] Some informants deny this and insist that they always pass to the chief. I was not myself long in Mwangonde among the Nyakyusa proper and I lack conclusive evidence on the point.

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423 The legal practice in this matter is still in process of formation and I quote the most recent account of it which I have in my notes without claiming that it is either complete or wholly accurate.

" If a coffee-planter who has moved," I was told, " either keeps the coffee trees clean himself or sends people to do so, then the trees are his ; if, however, he does not keep them clean and another man builds on that site and looks after them then they belong to the latter, for he it is who keeps them clean. But if both men concerned (both the planter who has moved and the newcomer on that site) want to have the trees then they belong to the planter, and no one can take them from him.

423 425 " Or, alternatively, if there are a great many coffee trees and their owner has moved (without making arrangements for cleaning) then the Government takes them and looks after them and sells them subsequently to some other man who can afford to buy. And if, maybe, a newcomer on that site has been keeping some of the trees clean, but not all, then the Government leaves some to him and takes the rest.

" And if a planter who has moved wishes later to come back to his old site then great pressure is put upon him to make a payment to the man who has kept the trees clean meanwhile.

" Aswile, for example, had planted coffee in his home in Kisokola's country but then he moved away and went to work (for Europeans) ; and when he returned from work he built at Kyimbila Mission. Meanwhile Mwankungili had succeeded to his site in Kisokola's country and had been looking after the coffee trees ; but no sooner did he begin to pick the coffee than Aswile came and wanted to know who was daring to pick his coffee. Mwankungili explained that he was doing so because he had spent a great deal of time and energy in keeping the trees clean ; and the two men disputed each other's claims. So Aswile took the case to Mwangoka's court, and it appeared that there were seventy-five trees in bearing with other younger ones as well, and that Mwankungili had looked after the trees, hoeing round them, for nine months. The court enquired of Aswile whether he had not moved ; but he denied having done so and maintained that his absence was only temporary, that he had every intention of returning soon. Mwankungili then pointed out that he had built a house at Kyimbila and actually planted some more coffee there ! And that was a proof that he had really moved. So the court sent a messenger to Kyimbila to see, and his report confirmed what Mwankungili had said. The court then asked Aswile whether he had given instructions to any relative to look after his coffee trees ; but no, he had not. So he was then told that he must pay Mwankungili for his labour ; but this he refused to do. The final judgment was that he must either pay Mwankungili for his labour or else leave the coffee trees to him.

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"Aswile thereupon appealed to Mpuguso (the appeal court of the Federation of chiefs); he absolutely refused to pay Mwankungili any money at all, but finally he agreed to give him some of the coffee trees. So he went with Mwankungili and a court messenger—and a crowd of people went with them to see this new custom—and divided up the trees, keeping the bulk for himself but giving some to Mwankungili in repayment for his hoeing. And Mwankungili accepted the division. Now Aswile's younger brother, who lives nearby, is looking after Aswile's trees and Mwankungili is looking after his own."

The same informant also told me of another case: "A man who had lived in Kisenkole's country moved to Mbalisi (in Mbeya District) and died there later. Now while living in Kisenkole's country he had planted forty-five coffee trees; all of which were now (at the time of the case which is being related) very large; and there were also some smaller trees as well. So then his heir, a brother, came back to the country to find that another man had built on that site meanwhile. But when he raised the question of the coffee, the occupier answered him amicably and said that he would buy it; and he paid 35/50c. for the trees. And then the heir took up land elsewhere in the same chiefdom. He had not wanted to claim the old site, only the coffee trees."

But still there remain difficulties of practice of which the fundamental one is that of owning *and tending* trees on another man's ground. *Syunguti* trees can be owned on another's homestead without difficulty for they require no attention, but it is hard to draw the line between the ordinary weeding and sweeping of the open space (*ukuleigile*) and bananas and the weeding of coffee trees that grow there. "Am I not to be allowed to *sweep* under my own bananas?" one man said indignantly when he returned to an old site of his to find coffee growing upon it. Where the coffee trees are still young the difficulty is sometimes got over—to the great displeasure of the Agricultural Officer—by transplanting them. But with older trees this is impossible.

Pasture, unlike garden land, is jointly owned by the whole village group and no individual has any exclusive rights to any portion of it. The detailed discussion of grazing-rights thus falls outside the scope of this paper, but two points must be noted here. In the first place every member of a village has the right to graze his cattle on the village pastures and this right may also be granted to an outsider by the grant-commoner in consultation with his neighbours. And, in the second place, when any member of a village takes up new garden land by hoeing it he must not, in so doing, encroach unduly on the village pastures.

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paid out of the Native Treasury from the taxes, rarely exceeds 10/- a month it may be doubted whether modern conditions are not in this, as in other respects, impoverishing the Nyakyusa chiefs.

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A chief had the right traditionally to evict any man he pleased if he desired his site for his own personal use, giving him another in exchange. But this right is no longer effective: "It is now at an end," as a chief's kinsman told me, "for the man evicted will go to Tukuyu (the administrative capital of the district) and complain that his chief is turning him out of his home without good cause." It is however still perfectly possible for a chief to take any *unoccupied* site he pleases without reference to the local villagers. He may take it for himself or he may give it to a kinsman, and no objection to such an action on his part is ever raised. It is only if he gives it to an ordinary commoner that his people will criticise him.

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Land once held by the kinsman of a chief at the latter's gift is more secure to him than any land can be which is granted in the ordinary way by a great-commoner; for no one but the chief himself can ever finally take it from him. If he moves and the villagers wish to give the site to a newcomer then they must either send a message after him and ask his permission to do so or else get explicit permission from the chief, if the newcomer's title is to be in any way secure.

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A case within my own knowledge well illustrates these points: Mwakobela, half-brother of chief Mwaipopo, had been given land in the village of Ipoma by Mwaipopo himself. Subsequently he had moved to Kibonde, a minor chiefdom under the jurisdiction of Mwaipopo, and had spent many years there; and when I first met him he was living there still. But then he fell sick and, suspecting witchcraft, decided to return to Ipoma, only to find his old building-site occupied. For the great-commoner of Ipoma, thinking he had moved for good, had given it to a newcomer.

This grant of land to the newcomer had been irregular in more ways than one: firstly Mwakobela's permission had not been asked, secondly no reference at all had apparently been made to Mwaipopo, who subsequently denied any part in the grant and, thirdly, the great-commoner had not even consulted his fellow villagers; if he had done so they would, as one of them told me in discussing the case, have reminded him of the necessity of first asking Mwakobela's permission. The newcomer however had been given the site unconditionally and when Mwakobela reclaimed it he refused to move; but the rights of Mwakobela were unquestionable and he had no difficulty at all in getting him evicted.

I went to visit Mwakobela a few weeks after he had taken possession of the site and he told me about the eviction: "I approached the great-commoner and asked him who had given Mwangonje (the newcomer)

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permission to build on my plot, perhaps, I suggested, it was Mwaipopo (the chief). But no, he told me, it was not Mwaipopo but he himself who had given the permission, and he said, further, that Mwangesiye would have to move, as I wished to come back, and that he would give him another site. But Mwangesiye refused to move and said that the place was his. So the next thing was that, at a funeral . . . . . I asked Mwaipopo who it was that had given my plot to this Mwangesiye who now claimed it as his own and made as if I had never built there, perhaps Mwaipopo himself had given it to him. And all that Mwaipopo replied was no, he had not done so.

"Then I simply brought my sons with bamboos and told them to begin building. Off goes Mwangesiye to Mwaipopo! 'Mwakobela,' he complains, 'is driving me away from my home!' 'Who gave you the plot?' asks Mwaipopo. 'The great-commoner gave it me.' 'And what does he say now?' 'He says I must move.' 'Well then you had better move!'

"And then, next morning, Mwangesiye came to me and said 'My friend I was wrong, the place was always yours, I will move; but the hanging bananas and the coffee trees I shall take with me.' 'Why certainly,' I replied, 'you may cut the banana bunches and transplant your coffee trees, I shall not object.' Thereupon the great-commoner offered him another site with bananas already growing on it, but he refused and said that he intended to return to live in the chiefdom from which he originally came.—And now his sons have carried away his house and there is only left that one hut over there (pointing) which they will take away shortly, and then later they will transplant his coffee trees also."

It was made abundantly clear to me that the important point was the fact that Mwakobela had originally been given the land directly by Mwaipopo, the chief; had he been given it in the ordinary way by the great-commoner with Mwaipopo's concurrence he would have had no claim on it at all. A member of the village of Ipoma explained this to me very lucidly: "If, in the first instance, Mwaipopo had not made the grant, if Mwakobela had approached the great-commoner and said that, as the plot was vacant, he would like to build there and if the great-commoner had agreed to this, then had Mwakobela later moved (as he did) to Kibiondo and spent many years there and had the plot meanwhile been given by the great-commoner to Mwangesiye—Mwaipopo all the time being in no way involved—then, if Mwakobela had returned and claimed the plot, the great-commoner would not have admitted his claim. If, in that case, Mwakobela had come to Mwangesiye and tried to evict him Mwangesiye would have complained to the great-commoner, who would then have addressed Mwakobela in some such terms as these:

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'You, sir, are a chief' (Mwakobela is one of the ruling chiefs' kinsmen, all of whom are entitled 'chiefs,') how then is it that you wish to drive men away? (For chiefs always desire to attract men to them!) Do you wish the two of us, you and I, to live together alone without any men? In the first instance you simply came to me and said that you wished to build here and I agreed that you should; but then you moved and I saw myself that you had built a new house and planted banana trees in another village and I supposed you had moved for good. Nor did you ever tell me that you might be coming back nor ask me to keep your site for you, you only told me that you were moving. So I cannot, as great-commoner, agree to evict Mwangwinye, I will find another site for you...'

" But as it was," my informant continued," the site had been granted by Mwaipopo himself. Mwaipopo had simply informed the great-commoner that he had given Mwakobela a certain vacant plot in his village. And then the great-commoner was at fault in that he gave the place to Mwangwinye without consulting his neighbours;[1] had he consulted us about it, and had he sent a message to Mwakobela to ask his permission to give the vacant site to another man, and had Mwakobela given the permission (he could hardly have refused it unless he were himself intending to return shortly), then again Mwakobela would have had no power at all to evict Mwangwinye. The great-commoner would have disallowed his claim, pointing out that he had been informed at the time and had agreed to Mwangwinye's building there. It was owing to the failure to inform Mwakobela at the time that he now has power to evict Mwangwinye."

" And supposing," I enquired," that Mwakobela had not been the younger brother of Mwaipopo, the ruling chief, but just a commoner, a stranger from another chiefdom, and supposing that some the less he had approached Mwaipopo in the first instance and asked for land, instead of going to the great-commoner, how would that have affected this case?"
—" Well, in the first place, Mwaipopo would have brought the stranger to the great-commoner and the two of them, the chief and the great-commoner would have discussed together where to give him land and decide to give him a certain vacant plot." " And then," I asked," if the stranger had moved to Kibondo and the great-commoner had given the plot to Mwangwinye, without informing him, could he then have returned later and evicted Mwangwinye, or not?" " No, he could not do so; had he attempted it the great-commoner would have disallowed the claim, asking

[1] It is, of course, never correct for a great-commoner to grant land without consulting his fellow villagers, but the point here is that, had he consulted them, they would have reminded him of the necessity of consulting Mwakobela before making this particular grant.

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him if it was his idea that the village should die out and leave him, the great-commoner, without men? As he had moved, the great-commoner would have continued, the place was presumably distasteful to him and it had now been allotted to another man. The claim would certainly have been disallowed!"

The examples in this paper have been taken almost entirely from pagan families. For Christians the situation is very much the same except where they live actually on mission land, there they are tenants of the Mission concerned and pay rent to it. And Christians, wherever they live, tend to be more stable in their occupation of land, since they are not forever moving in fear of witchcraft.

7. CONCLUSION

I have striven in this paper to make the individual land-rights possessed by Nyakyusa to-day intelligible to the European reader and to demonstrate to him their determining factors. Of these factors the following are the most important. The Nyakyusa were until recently an isolated and primitive people and so bring with them into the modern world a legal tradition based upon small social groups. This tradition is being inevitably modified both in theory and practice under modern conditions, but not out of all recognition; for they are still a relatively isolated people and the system of indirect rule secures them, in general, against arbitrary legal changes. Within their legal system individuals have, as in any system they must have, certain precisely defined and enforceable rights—among them rights in land.

Many kinds of land, however, are plentiful, though less so than of old owing to the growth of population, the opening of new markets for food and the recent introduction of ploughs. And this cheapness of land is reflected at times in a lack of rigour in the enforcement of rights in it which is unfamiliar to the European observer. Sufficient land for all is a fundamental condition of Nyakyusa society in its present form, which has no place for a landless man.

And, finally, the habitual movement of men with their families from one village to another to escape the witchcraft of their neighbours leads to a constant transfer of homesteads and gardens and is the main cause of difficulty in the administration of their laws of property in land and trees. This difficulty is greatest in the case of the newly introduced coffee trees which need continuous tending.